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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/727,151	12/02/2003	David K. Swanson	015916-305	5305

21836 7590 08/25/2006

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EXAMINER
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ROANE, AARON F

ART UNIT	PAPER NUMBER
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3739

DATE MAILED: 08/25/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/727,151	<b>Applicant(s)</b> SWANSON, DAVID K.	
	<b>Examiner</b> Aaron Roane	<b>Art Unit</b> 3739	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 13 July 2006.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-30 is/are pending in the application.
- 4a) Of the above claim(s) 9, 10 and 22-30 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-8 and 11-21 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>6/3/05, 11/18/05</u> | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### *Election/Restrictions*

Applicant's election without traverse of invention I and specie 15 in the reply filed on 7/13/2006 is acknowledged.

Claims 9, 10 and 22-30 have been withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention and specie, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on 7/13/2006.

The examiner will examine claims 1-8 and 11-21.

### *Claim Rejections - 35 USC § 102*

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-8 and 11-21 are rejected under 35 U.S.C. 102(e) as being anticipated by Tetzlaff et al. (USPN 6,277,117).

Regarding claims 1 and 13, Tetzlaff et al. disclose a surgical apparatus comprising: a carrier (22 and 24) movable between an unstressed state and a stressed state; a tissue stimulation element (110 and 120) supported on the carrier, and a tissue engagement device/means for securing (32 and 34) associated with the carrier and configured to secure the carrier to tissue in the stressed state, see col. 3-10 and figures 1-8.

Regarding claims 2-7, Tetzlaff et al. disclose the claimed invention.

Regarding claim 8, Tetzlaff et al. disclose the tissue engagement device comprises first and second tissue piercing members (jagged edges and/or pointed tips of 31 and 33), see col. 4, lines 48-67 and figure 3.

Regarding claims 11, 12, 14 and 15, Tetzlaff et al. disclose that the stimulation elements are pairs of stimulation electrodes (116 and 126), see col. 6 and figure 5.

Regarding claim 16, Tetzlaff et al. disclose a surgical apparatus comprising: a carrier (22 and 24) movable between an unstressed state and a stressed state; a tissue stimulation element (110 and 120) supported on the carrier, and an anchor (31 and 33) for securing the carrier to tissue in the stressed state, see col. 3-10 and figures 1-8.

Regarding claims 17 and 18, Tetzlaff et al. disclose that the stimulation elements are pairs of stimulation electrodes (116 and 126), see col. 6 and figure 5.

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Regarding claim 19, Tetzlaff et al. disclose an anchor that includes a flexible carrier(s) (32 and 34), see col. 4, lines 48-67 and figure 3.

Regarding claim 20, Tetzlaff et al. disclose a flexible carrier that has a non-linear cross section when in the relaxed state, see col. 4, lines 48-67 and figure 3.

Regarding claim 21, Tetzlaff et al. disclose an anchor that includes a tissue piercing device (jagged edges and/or pointed tips of 31 and 33) associated with the flexible carrier, see col. 4, lines 48-67 and figure 3.

### *Conclusion*

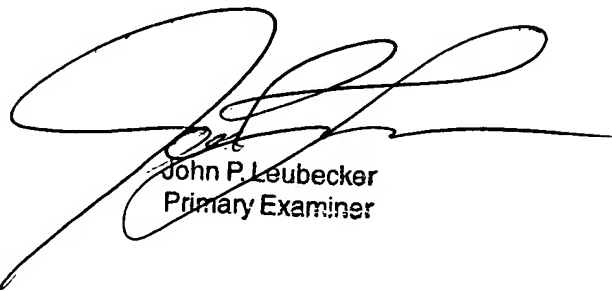
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Aaron Roane whose telephone number is (571) 272-4771. The examiner can normally be reached on Monday-Thursday 7AM-6PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Linda Dvorak can be reached on (571) 272-4764. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

A.R. *A.R.*  
August 20, 2006

  
John P. Leubecker  
Primary Examiner